

## 37 Am. Jur. 2d Fraud and Deceit § 62

American Jurisprudence, Second Edition | May 2021 Update

### Fraud and Deceit

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### IV. False Representations

#### A. In General

## § 62. Questions of law and fact

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### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  9

No hard and fast rule can be laid down as to what constitutes a fraudulent representation in any particular case. The result, of necessity, depends upon the peculiar circumstances and conditions involved.<sup>1</sup>

Questions for the jury arise when one attempts to prove the specific facts with reference to a representation, which must be proved in establishing fraud in the making of such representation.<sup>2</sup> Issues of fact are presented upon a conflict in the evidence as to whether a representation alleged to have been made by the party charged with fraud was in fact made by that party<sup>3</sup> and whether it was false.<sup>4</sup> Ambiguity in a representation presents questions of fact for determination by the jury as to the meaning of the statement and the meaning which the person making it intended it should convey to the person to whom it was made.<sup>5</sup>

On the other hand, the question whether a representation is actionable as a fraud or deceit of which cognizance is taken by the court for the purpose of a grant of relief may be entirely one of law<sup>6</sup> as where it appears without dispute in the evidence that the representation was only a statement of the opinion or belief of the person making it, not to be relied upon as a statement of fact.<sup>7</sup> Moreover, the materiality of a false representation may sometimes be determined by the court as a question of law.<sup>8</sup>

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### Footnotes

<sup>1</sup> [Bareham & McFarland v. Kane](#), 228 A.D. 396, 240 N.Y.S. 123 (4th Dep't 1930).

<sup>2</sup> [Monsanto Chemical Works v. American Zinc, Lead & Smelting Co.](#), 253 S.W. 1006 (Mo. 1923).

<sup>3</sup> [Monsanto Chemical Works v. American Zinc, Lead & Smelting Co.](#), 253 S.W. 1006 (Mo. 1923); [Halsey v. Minnesota-South Carolina Land & Timber Co.](#), 174 S.C. 97, 177 S.E. 29, 100 A.L.R. 1 (1934).

<sup>4</sup> [Worcester Felt Pad Corp. v. Tucson Airport Authority](#), 233 F.2d 44, 59 A.L.R.2d 1121 (9th Cir. 1956); [Roberts v. James](#), 83 N.J.L. 492, 85 A. 244 (N.J. Ct. Err. & App. 1912).

<sup>5</sup> §§ 106, 109.

<sup>6</sup> [Monsanto Chemical Works v. American Zinc, Lead & Smelting Co.](#), 253 S.W. 1006 (Mo. 1923).

<sup>7</sup> § 70.

<sup>8</sup> § 230.

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